

UNITED STATES OF AMERICA
 BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
 William E. Kovacic
 J. Thomas Rosch
 Edith Ramirez
 Julie Brill

In the Matter of TRANSITIONS OPTICAL, INC. a corporation.))))))))	Docket No. C-4288
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DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of Transitions Optical, Inc. (hereinafter “TOI” or Respondent), and Respondent having been furnished thereafter with a copy of a draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent TOI is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 9251 Belcher Road, Pinellas Park, Florida 33782.
2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

THE PARTIES

- A. “Respondent” or “TOI” means Transitions Optical, Inc., its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Transitions Optical, Inc.; and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.

OTHER DEFINITIONS

- C. “Analysis to Aid Public Comment” means the public statement provided by the Commission that describes the allegations in the Complaint in FTC Dkt. No. 091-0062 and the terms of this Order.
- D. “Antitrust Compliance Program” means the program to ensure compliance with this Order and with the Antitrust Laws, as required by Paragraph III of this Order.
- E. “Antitrust Laws” means the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et. seq.*, the Sherman Act, 15 U.S.C. § 1 *et. seq.*, and the Clayton Act, 15 U.S.C. § 12 *et. seq.*
- F. “Bundled Discount” means any Discount that is conditioned, either formally or informally, directly or indirectly, upon a Direct Customer or Indirect Customer’s purchase, distribution, promotion, marketing, license, or sale of Photochromic Products in more than one Lens Material and/or more than one Refractive Index Range.
- G. “Competing Photochromic Product” means any Photochromic Product other than Respondent’s Photochromic Product.

- H. “Corrective Ophthalmic Lenses” means any lens, whether finished, semi-finished or unfinished, that is designed to be used for vision correction and to be worn in eyeglass frames, including but not limited to, any single vision, bifocal, trifocal, or progressive lens made of or containing glass, polycarbonate, plastic, Trivex[®] or other materials.
- I. “Development Partner” means any Direct Customer that, together with Respondent, invests substantial resources, in terms of time, money and/or technical know-how, in the research and development of a new and innovative Photochromic Product.
- J. “Direct Customer” means any Person who purchases, or otherwise takes delivery or receives directly, from Respondent any Photochromic Product; or who conveys, delivers, consigns, or sells Corrective Ophthalmic Lenses directly to Respondent for the application of Respondent’s Photochromic Materials or Photochromic Treatments. A Direct Customer includes without limitation ophthalmic lens casters, but specifically excludes Shareholders.
- K. “Discount” means any price reduction, rebate, or other incentive that provides pecuniary value to a Direct Customer or Indirect Customer, including but not limited to, marketing funds, co-op funds, and business building funds.
- L. “Exclusivity” or “Exclusive” means any requirement, whether formal or informal, or direct or indirect, by the Respondent that a Direct Customer or Indirect Customer research, develop, manufacture, distribute, produce, market, purchase, sell, or license Respondent’s Photochromic Products as its Preferred or as its only Photochromic Product, or any other requirement that a Direct Customer or Indirect Customer restrain, refrain from, or limit its research, development, manufacture, production, distribution, marketing, promotion, sales, purchases, or licensing of any Competing Photochromic Product.
- M. “Executive and Sales Staff” means all Directors on the Board of Directors, the President, all Vice-Presidents, the General Counsel, the General Manager, the Chief Financial and Administrative Officer, members of the Executive Committee, and the Directors of External Affairs and Managed Vision Care of Respondent (or their equivalent positions regardless of job title); and the officers, directors, employees, and contractors of Respondent whose duties primarily relate to the marketing, promotion, or sale of Photochromic Products.
- N. “Independent Eye Care Professional” means any optician, optometrist or ophthalmologist not affiliated with a wholesale optical laboratory or optical retailer, and who works in a non-franchised operation with fewer than four establishments.
- O. “Indirect Customer” means any Person who sells, distributes, produces, markets, promotes, purchases, or licenses Respondent’s Photochromic Products but does not buy or sell Respondent’s Photochromic Products or Corrective Ophthalmic Lenses directly from or to Respondent. Indirect Customers include, but are not limited to, any retailer of

Corrective Ophthalmic Lenses, any insurance company that provides vision care benefits, and any wholesale optical laboratory, regardless of whether or not the Indirect Customer: (i) is owned, in whole or in part, by a Direct Customer; or (ii) receives shipments of Respondent's Photochromic Products directly from Respondent on behalf of a Direct Customer.

- P. "In-Kind Contribution" means: (i) any item of pecuniary value, other than money; (ii) the reimbursement by Respondent of the purchase price of any item of pecuniary value if purchased directly by an Indirect Customer; and/or (iii) a lump-sum advance of Discounts reasonably anticipated to be paid by Respondent to an Indirect Customer if necessary to provide joint marketing support at a third party's special event (e.g., golf tournament).
- Q. "In-Person Training" means any educational session, seminar, or other meeting whereby individuals participate on a face-to-face basis or through a live video-conference feed as part of the Antitrust Compliance Program required in Paragraph III of this Order.
- R. "Lens Material" means any glass, plastic, polycarbonate, Trivex[®] or other material used in whole or in part to manufacture Corrective Ophthalmic Lenses.
- S. "Minimum Batch Size" means the minimum quantity of Corrective Ophthalmic Lenses that can be cost effectively produced by Respondent in a single operation, which shall not exceed 150 lenses.
- T. "Person" means any individual, partnership, joint venture, firm, corporation, association, trust, unincorporated organization, joint venture, or other business or governmental entity, and any subsidiary, division, group or affiliate thereof.
- U. "Photochromic Corrective Ophthalmic Lenses" means any Corrective Ophthalmic Lenses to which Photochromic Materials have been applied.
- V. "Photochromic Material" means any dye, monomer, coating, film or other substance that darkens when exposed to ultraviolet radiation and lightens when removed from ultraviolet radiation.
- W. "Photochromic Products" means one or more of Photochromic Materials, Photochromic Treatments, or Photochromic Corrective Ophthalmic Lenses.
- X. "Photochromic Treatments" means the process or method of applying Photochromic Materials to Corrective Ophthalmic Lenses.
- Y. "Preferred" means any requirement, whether formal or informal, or direct or indirect, that a Direct Customer or Indirect Customer research, develop, manufacture, produce, distribute, promote, market, purchase, sell, or license Respondent's Photochromic Products on a more favorable basis than a Competing Photochromic Product.

- Z. “Price Term” means the retail or wholesale price, resale price, purchase price, price list, credit term, delivery term, service term, or any other monetary term defining, setting forth, or relating to the money, compensation, or service paid by a Direct Customer or Indirect Customer to Respondent or received by a Direct Customer or Indirect Customer in connection with the purchase or sale of any of Respondent’s Photochromic Product.
- AA. “Product Development Service” means any service, assistance or other support related to the research, development or application of any improved, modified, or innovative Photochromic Product.
- BB. “Product Support” means any service, assistance or other support related to: (i) the qualification or validation process associated with applying Respondent’s Photochromic Materials or Photochromic Treatments on Corrective Ophthalmic lenses; and (ii) examining, identifying, and developing solutions related to any problems associated with the application to or performance of Respondent’s Photochromic Materials or Photochromic Treatments on Corrective Ophthalmic Lenses.
- CC. “Refractive Index” means the measure of the ability of a Corrective Ophthalmic Lens to bend light, which influences the center thickness of the lens.
- DD. “Refractive Index Range” means each of the following categories of Refractive Indices for Corrective Ophthalmic Lenses: (i) 1.5; (ii) 1.51 - 1.60; and (iii) 1.61 and higher.
- EE. “Respondent’s Other Photochromic Products” means any ophthalmic lenses, other than Corrective Ophthalmic Lenses, that are treated with Photochromic Materials and that are researched, developed, manufactured, produced, distributed, promoted, marketed, or sold by, under license by, or on behalf of Respondent, including but not limited to, by contract manufacturers.
- FF. “Respondent’s Photochromic Product” means any Photochromic Product researched, developed, manufactured, produced, distributed promoted, marketed, or sold by, under license by, or on behalf of Respondent, including but not limited to, by contract manufacturers.
- GG. “Shareholder” means any Person that holds at least a forty (40) percent ownership interest in Respondent, its successors and assigns, and any wholly-owned subsidiaries or affiliates of such Shareholder that otherwise would be considered a Direct Customer.
- HH. “Volume Discount” means any Discount that is based upon increasing quantities of purchases or sales, by Lens Material or by Refractive Index Range, of Respondent’s Photochromic Product, and specifically excludes any Discount that is based upon the amount of Respondent’s Photochromic Products that are purchased or sold as a percentage or proportion of a customer’s total purchases or sales of Photochromic Products.

II.

IT IS FURTHER ORDERED that, acting directly or indirectly, or through any corporate or other device, in or affecting commerce, as “commerce” is defined by the Federal Trade Commission Act, in connection with the licensing, development, production, manufacture, marketing, promotion, purchase or sale of Photochromic Products:

- A. Respondent shall cease and desist from inviting, entering into, implementing, continuing, enforcing, or attempting thereto, any condition, policy, practice, agreement, or understanding that has the intent or effect of achieving Exclusivity with a Direct Customer, including but not limited to:
1. Conditioning the research, development, manufacture, promotion, distribution, marketing, sale, purchase, or licensing of any of Respondent’s Photochromic Products on Exclusivity;
 2. Requiring a Direct Customer to purchase minimum amounts (by units, revenue, or any other measure) of Respondent’s Photochromic Products in excess of the Minimum Batch Size;
 3. Requiring a Direct Customer to restrain or limit its sales, research, development, production, distribution, marketing, promotion, purchases, or licensing of any Competing Photochromic Product; and
 4. Conditioning the availability or applicability of Discounts, Price Terms, Product Support, or Product Development Services for Respondent’s Photochromic Products on Exclusivity.

provided, however, that Respondent may enter into a written agreement, contract, or other understanding with any Development Partner(s) that provides for Exclusivity by both the Respondent and the Development Partner(s) regarding the research, development, manufacture, promotion, purchase, or sale of any jointly developed Photochromic Product.

- B. Respondent shall cease and desist from inviting, entering into, implementing, continuing, enforcing, or attempting thereto, any condition, policy, practice, agreement, contract, understanding, or any other requirement with respect to an Indirect Customer that:
1. Contains a condition, term or other provision providing for Exclusivity unless:
 - (a) the Indirect Customer, for any or no cause, and without payment or penalty of any kind, may terminate any condition, agreement, contract or understanding providing for Exclusivity upon thirty (30) days or less written notice;

- (b) the condition, term or other provision providing for Exclusivity can be applied to any subset of Lens Materials and/or any subset of Refractive Index Ranges, if requested in writing by the Indirect Customer; and
 - (c) the Discount terms and rates offered or provided to an Indirect Customer by Respondent for Exclusivity on any Lens Material(s) and/or any Refractive Index Range(s) are the same irrespective of whether or not the Indirect Customer elects to be Exclusive on all Lens Materials and Refractive Index Ranges or only a subset thereof.
 - 2. Provides a flat or lump-sum payment of monies to an Indirect Customer in exchange for any condition, agreement, contract or understanding providing for Exclusivity; and
 - 3. Provides an In-Kind Contribution to an Indirect Customer in exchange for any condition, agreement, contract or understanding providing for Exclusivity, unless:
 - (a) Respondent cannot recover the In-Kind Contribution, or any part of the value of the In-Kind Contribution, in the event of termination; and
 - (b) The provision of the In-Kind Contribution, or the manner in which the In-Kind Contribution is provided, does not infringe upon, limit, or otherwise make it impractical for an Indirect Customer to exercise its termination rights under Paragraph II.B.1 of this Order.
- C. Respondent shall cease and desist from inviting, entering into, implementing, continuing, enforcing, or attempting thereto, any condition, policy, practice, agreement, contract, understanding or any other requirement by the Respondent that:
 - 1. Limits, restrains or prohibits any Direct Customer or Indirect Customer from communicating information about any Competing Photochromic Product to any Person, unless such information is false or deceptive; and
 - 2. Limits, restrains or prohibits any Direct Customer or Indirect Customer from selling a Competing Photochromic Product on the same brand(s) or product(s) in which the Direct Customer or Indirect Customer also sells Respondent's Photochromic Products, unless an Indirect Customer has a condition, agreement, contract or other understanding with Respondent providing for Exclusivity as permitted under Paragraph II.B. of this Order.
- D. Respondent, for ten (10) years from the date this Order becomes final, shall cease and desist from inviting, entering into, implementing, continuing, enforcing, or attempting thereto, any condition, policy, practice, agreement, contract, understanding or any other requirement that:

1. Conditions Price Terms or Discounts offered or provided to a Direct Customer or Indirect Customer based upon the amount of Respondent's Photochromic Products purchased or sold (in units, revenues, or any other measure) by that Direct Customer or Indirect Customer as a percentage or proportion of that customer's total purchases or sales of Photochromic Products; and
 2. Conditions Discounts offered or provided to a Direct Customer or Indirect Customer as a flat or lump-sum payment of monies or any other item(s) of pecuniary value based upon the Direct Customer or Indirect Customer's sales or purchases of Respondent's Photochromic Products reaching a specified threshold (in units, revenues, or any other measure), or otherwise reducing the price of one unit of Respondent's Photochromic Products because of the purchase or sale of an additional unit. By way of example, Respondent may offer or provide a discount of X% on all sales in excess of Y lenses, but it may not offer or provide a discount of X% on all lenses if sales exceed Y lenses.
- E. Respondent, for ten (10) years from the date this Order becomes final, shall not provide Bundled Discounts to any Direct Customer or Indirect Customer.
- F. Except to the extent permitted in Paragraph II.B of this Order, Respondent shall cease and desist from discriminating against, penalizing, or otherwise retaliating against any Direct Customer or Indirect Customer, for the reason, in whole or in part, that the Direct Customer or Indirect Customer engages in, or intends to engage in, the research, development, manufacture, production, distribution, purchase, marketing, promotion, sales, or licensing of a Competing Photochromic Product, or otherwise refuses to enter into or continue any condition, agreement, contract, understanding or other requirement of Exclusivity. Examples of prohibited discrimination or retaliation against a Direct Customer or Indirect Customer shall include, but not be limited to:
1. Terminating, suspending or delaying, or threatening or proposing thereto, sales of Respondent's Photochromic Products to the Direct Customer or Indirect Customer;
 2. Auditing the Direct Customer's or Indirect Customer's purchases or sales of Photochromic Products to determine the extent of purchases or sales of Competing Photochromic Products;
 3. Withdrawing or modifying, or threatening or proposing thereto, favorable Price Terms, Product Development Services, or Product Support to the Direct Customer;
 4. Providing, or threatening or proposing thereto, less favorable Price Terms, Product Development Services, or Product Support to the Direct Customer;

5. Withholding from the Direct Customer or Indirect Customer Photochromic Products newly developed or introduced by Respondent; and
6. Refusing to deal with the Direct Customer or Indirect Customer on terms and conditions generally available to other Direct Customers or Indirect Customers.

provided, however, that Respondent will not be considered to be in violation of this Paragraph by the mere fact that Respondent markets or competes against a Competing Photochromic Product that is owned or sold by a Direct Customer or Indirect Customer.

- G. Notwithstanding any provision of this Order, Respondent may provide or offer to provide the following without it constituting in and of itself a violation of this Order:
1. Volume Discounts to Direct Customers or Indirect Customers that are calculated, based upon, or reflect actual differences in the cost of manufacture, sale or delivery resulting from the differing methods or quantities in which Respondent's Photochromic Products are sold or delivered;
 2. Discounts to Direct Customers or Indirect Customers that are sufficient to meet but not exceed the Discounts, Price Terms, Product Development Services, or Product Support actually provided or offered to be provided by any Person selling, distributing, promoting, marketing, or licensing Competing Photochromic Products; and
 3. Discounts that are offered or provided to Direct Customers or Indirect Customers with a condition or other requirement that the Discount be used solely in the sale, development, manufacture, distribution, promotion or marketing of Respondent's Photochromic Products, *provided* that Respondent does not preclude sales or promotional efforts of Competing Photochromic Products on any portion of sales or marketing materials or events that are not funded by Respondent.
- H. Respondent, within ninety (90) days after the date this Order becomes final, shall waive or modify any condition, requirement, policy, agreement, contract, or understanding with Direct Customers or Indirect Customers that is inconsistent with the terms of this Order.

III.

IT IS FURTHER ORDERED that Respondent shall design, maintain, and operate an Antitrust Compliance Program to comply with this Order and with the Antitrust Laws. This program shall include, but not be limited to:

- A. Respondent's designation of an officer or director to supervise personally the design, maintenance, and operation of this program;

- B. Distribution of a copy of this Order and Exhibit A to this Order to all Executive and Sales Staff:
 - 1. Within thirty (30) days of the date this Order becomes final; and,
 - 2. Annually within thirty (30) days of the anniversary of the date this Order becomes final until the Order terminates;
- C. In-Person Training on the requirements of this Order and the Antitrust Laws for Respondent's Executive and Sales Staff to occur within thirty (30) days after this Order becomes final, or for any subsequently hired Executive and Sales Staff, within thirty (30) days of their employment start date;
- D. The retention of documents and records sufficient to record Respondent's compliance with its obligations under this Paragraph III of this Order;
- E. Creation on Respondent's web site within thirty (30) days after this Order becomes final, and which shall be maintained until the termination of this Order, a link to this Order and the Analysis to Aid Public Comment on the Commission's web site, with such link to be located on Respondent's web site at a place reasonably calculated to be found by Independent Eye Care Professionals.
- F. Distribution within thirty (30) days after this Order becomes final of a copy of this Order, the Analysis to Aid Public Comment, and Exhibit B to all Direct Customers who have purchased or sold Photochromic Products from or to Respondent within twelve (12) months prior to the date this Order becomes final; and
- G. Distribution of a copy of this Order, the Analysis to Aid Public Comment, and Exhibit B to:
 - 1. All Indirect Customers with existing conditions, contracts, agreements or other understandings providing for Exclusivity within thirty (30) days after this Order becomes final and at the time of any contract renewal; and
 - 2. All Indirect Customers, other than Independent Eye Care Professionals, that may enter into new conditions, contracts, agreements or other understandings providing for Exclusivity, or any other contracts, agreements or other understandings for the provision of Discounts to the Indirect Customer, at the beginning of any negotiations, or before any proposals or offers are made or accepted by Respondent.

IV.

IT IS FURTHER ORDERED that:

- A. Within sixty (60) days after the date this Order becomes final, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which the Respondent has complied, is complying, and will comply with this Order. For the period covered by this report, the report shall include, but not be limited to:
1. The name, title, business address, e-mail address, and business phone number of the officer or director designated by Respondent to design, maintain, and operate Respondent's Antitrust Compliance Program;
 2. The name, title, and business address of each Person to whom Respondent distributed a copy of Exhibit A to this Order, and the date and manner of distribution to each;
 3. The name, title, and business address of each Person who received In-Person Training on the requirements of this Order and the Antitrust Laws; the date and location at which each Person was trained; the name, title, and business address of the Person who conducted the training; and a description in reasonable detail of the In-Person Training;
 4. The name, address, and phone number of each Direct Customer to whom Respondent distributed a copy of this Order, the Analysis to Aid Public Comment, and Exhibit B to this Order; and,
 5. The name, address, and phone number of each Indirect Customer to whom Respondent distributed a copy of this Order, the Analysis to Aid Public Comment, and Exhibit B to this Order.
- B. One (1) year after the date this Order becomes final, and annually for the following six (6) years on the anniversary of the date this Order becomes final, as well as at any other such times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with the Order. For the periods covered by these reports, these reports shall include, but not be limited to:
1. The name, title, business address, e-mail address, and business phone number of the officer or director designated by Respondent to design, maintain, and operate Respondent's Antitrust Compliance Program;
 2. The name, title, and business address of each Person to whom Respondent distributed a copy of Exhibit A to this Order, and the date and manner of distribution to each;

3. The name, title, business address, e-mail address, and business phone number of each Person within Respondent's Executive and Sales Staff who received Exhibit A to this Order and In-Person Training on the requirements of this Order and the Antitrust Laws during the reporting period, the date each Person received Exhibit A to this Order and In-Person Training, and a description in reasonable detail of the In-Person Training;
4. A description in reasonable detail of any policy, agreement, contract, understanding, or other requirement by Respondent that a Direct Customer or Indirect Customer deal Exclusively with Respondent with respect to any of Respondent's Other Photochromic Products, and with respect to each such product:
 - (a) Describe in reasonable detail the policy, agreement, contract, understanding, or requirement providing for Exclusivity; and,
 - (b) State the name, address, phone number, and e-mail address of each Person concerning which Respondent has enforced or attempted to enforce the policy, agreement, contract, understanding, or other requirement of Exclusivity; and
5. The name, address, phone number, and e-mail address of each Person who has complained or alleged, orally or in writing (including, but not limited to, pleadings filed in any state or federal court), that Respondent has violated this Order or the Antitrust Laws, a description in reasonable detail of the complaint or allegation, and a description of any action or conduct by Respondent taken or proposed in response to the complaint or allegation.

V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Respondent;
- B. Any proposed acquisition, merger or consolidation of Respondent; or
- C. Any other change in Respondent, including but not limited to, assignment, the creation or dissolution of subsidiaries, or if such change may affect compliance obligations arising out of this Order.

VI.

IT IS FURTHER ORDERED that for the purpose of determining or securing compliance with this order, upon written request, Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent relating to any matters contained in this Order, which copying services shall be provided by Respondent at the request of the authorized representative(s) of the Commission and at the expense of Respondent; and
- B. Upon five (5) days' notice to Respondent and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may have counsel present, regarding such matters.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on April 22, 2030.

By the Commission, Commissioner Ramirez and Commissioner Brill not participating.

Donald S. Clark
Secretary

SEAL
ISSUED: April 22, 2010

EXHIBIT A

[INTERNAL NOTICE]

The Federal Trade Commission (“FTC”) has been investigating various practices used by Transitions Inc. (“TOI”) in the marketing and sale of photochromic materials and coatings used on corrective ophthalmic lenses. The purpose of the FTC’s investigation has been to determine if any of those practices violate federal antitrust laws.

TOI does not believe that its past or present practices violate any state or federal laws. However, to end the investigation quickly and to obtain clear guidelines about how TOI can market and sell its products, TOI has reached a settlement with the FTC. Under the settlement, TOI has signed a consent agreement with the FTC agreeing that the FTC can issue and TOI will be bound by a Decision and Order (“Order”) issued by the FTC.

It is very important to TOI that all of its executives, employees and contractors understand and comply with the Order. We are providing this notice as a first step to help you do that by telling you about the Order, describing a few of its most important terms, and telling you how you can learn more about the Order and get answers to any questions you may have about it.

Some of the Order’s terms apply to TOI’s transactions with its direct customers (e.g., lens casters), some terms apply to TOI’s relationships with its indirect customers (e.g., wholesale optical laboratories and optical retailers), and some Order terms apply to both. Generally, the Order prohibits TOI, directly or indirectly, formally or informally, from agreements or practices that require its direct customers to purchase photochromic materials, coatings, or products exclusively from TOI.

The Order’s terms regarding TOI’s indirect customers are different. Under circumstances described in the Order, TOI can enter into agreements with indirect customers to sell TOI’s photochromic products exclusively. However, TOI must allow these indirect customers the option to terminate these agreements without cause and without penalty on 30 days notice. TOI also must allow these indirect customers the option to sell exclusively only some of TOI’s products (by lens material or by refractive index range). The terms of the Order affect how TOI can offer volume discounts, cooperative advertising, and other marketing support to its customers. The Order prohibits TOI from using its pricing and marketing policies and programs to retaliate against or punish direct or indirect customers who refuse to sell TOI’s photochromic products exclusively.

TOI wants to help you better understand TOI’s rights and obligations under the Order. Therefore, as required by the Order, TOI has appointed [name and title] to oversee a program to train TOI’s executives and sales staff on the Order and the antitrust laws. You will be contacted soon to schedule your training, which must be conducted by [insert date 30 days from the date the Order becomes final by service]. In the meantime, if you have any questions at any time about the Order or your training, please contact [identify contact person] at [e-mail or phone].

EXHIBIT B

[Transitions letterhead]

Dear [name of customer]:

The Federal Trade Commission (“FTC”) has been investigating various practices used by Transitions Inc. (“TOI”) in the marketing and sale of photochromic materials and coatings used on corrective ophthalmic lenses. The purpose of the FTC’s investigation has been to determine if any of those practices violate federal antitrust laws.

TOI does not believe that its past or present practices violate any state or federal laws. However, to end the investigation quickly and to obtain clear guidelines about how TOI can market and sell its products, TOI has reached a settlement with the FTC. Under the settlement, TOI has signed a consent agreement with the FTC agreeing that the FTC can issue and TOI will be bound by a Decision and Order (“Order”) issued by the FTC.

The Order requires TOI to send the enclosed copies of the Order and the FTC’s Analysis to Aid Public Comment to its customers. You also may read and download a copy of the Order from the FTC at its web site at [web link to Order] and a copy of the Analysis to Aid Public Comment at [web link to AAPC]. TOI’s obligations under the Order are set out in Paragraph II of the Order, beginning on page 5. Capitalized terms used in the Order are defined in Paragraph I of the Order, which begins on page 2.

If you have concerns in the future about whether TOI is complying with its obligations under the Order, TOI invites you to raise them with us directly. You may contact any of our sales staff with whom you do business, or contact our corporate offices directly by phoning or e-mailing [name] at [phone number and e-mail address].

Alternatively or additionally, you may contact the FTC directly to express your concerns. You may reach the FTC by phone at [phone number] or by e-mail at [e-mail address].

Sincerely,

[name and title]